

Supporting Doc. No. 158 and Responding to Doc No. 166 in Docket 1:09-cv-02363-LAK  
Supporting Doc. No.582 and responding to Doc. No. 710 in Docket 09 MD 2017 (LAK).

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In re: :  
LEHMAN BROTHERS SECURITIES AND :  
ERISA LITIGATION :  
: :  
: Civil Action 09 MD 2017 (LAK)  
This document applies only to: :  
*American National Insurance Company et al. v. :*  
*Richard S. Fuld, Jr., et al., :*  
S.D.N.Y. Case No. 1:09-cv-02363-LAK :  
-----X

**REPLY OF DEFENDANT INCAPITAL, LLC TO MEMORANDUM  
OF LAW IN OPPOSITION TO DEFENDANTS CHARLES  
SCHWAB & CO. INC. AND INCAPITAL LLC'S MOTIONS  
TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT**

Defendant Incapital, LLC hereby adopts and incorporates by reference Parts I.A, I.C and I.D  
and Parts III.A and III.B of the Bank Defendants' And Ernst & Young LLP's Joint Reply  
Memorandum Of Law In Further Support Of Their Motions To Dismiss Plaintiffs' Second  
Amended Complaint, filed on March 5, 2012, in response to the Memorandum Of Law In  
Opposition To Defendants Charles Schwab & Co., Inc. And Incapital LLC's Motions To  
Dismiss Plaintiff's Second Amended Complaint (filed as Doc. No. 166 in Docket 1:09 cv-02363-  
LAK and as Doc. No. 710 in Docket 09 MD 2017 (LAK)).<sup>1</sup>

---

<sup>1</sup> Like a number of the Bank Defendants, Incapital, LLC was not named as a defendant in this case until Plaintiffs' Second Amended Complaint was filed on October 7, 2011, advancing claims under Section 11 of the Securities Act of 1933 relating to three Series-D notes that Plaintiff Moody Foundation allegedly purchased in January of 2008.

**CONCLUSION**

Defendant Incapital LLC respectfully requests that Plaintiffs' Second Amended Complaint against it be dismissed with prejudice.

Respectfully submitted,

BOIES SCHILLER & FLEXNER, LLP

By: \_\_\_\_\_

David R. Boyd (admitted *pro hac vice*)

([dboyd@bsflp.com](mailto:dboyd@bsflp.com))

5301 Wisconsin Avenue, N.W.

Suite 800

Washington, D.C. 20015

Tel: (202) 237-2727

Fax: (202) 237-6141

Dated: March 5, 2012